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INTERIM REGULATIONS GUIDE

HHS* DAY CARE REGULATIONS

The Department of Health, Education and Welfare (HEW) was changed to the Department of Health and Human Services (HHS), effective May 4, 1980

HE 23.1008:

INTERIM DAY CARE REGULATION GUIDE

Attached is the Interim Guide to the Department of Health and Human Services Day Care Regulations. The regulations were published in the Federal Register on March 19, 1980 and establish a minimum quality of care for children in Federally-funded day care centers and homes.

It should be noted that there are two technical amendments to the regulations:

1. Section 71.64, the State Agency Waiver for centers, was amended to include group size with staffing requirements.

2. As amended, Section 71.66, the effective date, allows a state to request an extension of the effective date of the group composition requirements for day care homes as well as those for centers.

The guide does not add requirements; it is designed to clarify the regulations by stating their intent and discussing ways to achieve compliance as well as suggesting best practices. This is an "interim" guide since it is recognized that new questions will arise during implementation of the regulations. Rather than answer each new question individually, it was decided to collect all questions and attempt to respond instead in a final version of the guide.

To assist the Department in its efforts to develop a final guide that is a useful tool, we invite your comments and suggestions. Please list any requirements you feel need greater clarity, specific questions you would like addressed, and any format changes that would make the guide easier to use. All recommendations should be sent to:

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PREFACE

These HHS Day Care Requirements amend Part 71 of the Code of Federal Regulations (CFR) Title 45. Title 45 of the CFR contains all the major regulations in PUBLIC WELFARE.

These regulations replace the 1968 Federal Interagency Day Care Requirements (FIDCR).

Child day care activities are administered within HHS in the Administration for Children, Youth and Families, Office of Human Development Services.

DAY CARE is a service for the child and the family. Day care services include comprehensive and coordinated sets of activities providing direct care and protection of infants, toddlers, pre-school and school-age children outside of their own homes during a portion of a 24-hour day. Comprehensive services include, but are not limited to, developmental, social, health and nutritional services and parent participation. Such services require provision of supporting activities including administration, coordination, training, and program evaluation.

DAY CARE services supplement parental care by providing for the care and protection of children who must be cared for by persons other than their parents, usually while their parents work. These services may also be provided when parents are in training programs and for other reasons they may need services for their children.

DAY CARE can serve as a supportive service in the child's family along with other family support services such as homemaker services.

The value of parent involvement in the day care program is emphasized in the HHS requirements. In addition, day care services should be developed and delivered as part of a comprehensive community plan designed to promote and maintain stable family and community environments for children.

This Regulations Guide is designed to assist in the implementation of the Day Care Regulations. Printed in July 1980, the Guide will be revised and issued in final form in December of 1980. Comments and suggestions are welcome.

Introduction

The HHS Day Care Regulations are based on the following policy assumptions:

- The Federal government shares in the responsibility for providing leadership to enhance the emotional, physical, social, and intellectual development of children in day care.
- Federal leadership can be expressed in many different ways: regulations, education, resource materials, technical assistance, training aids, and model programs and model laws.
- Regulations for Federally funded day care are an important part of a total statement of national day care policy. However, regulations cannot be the full embodiment of that policy.
- Day care regulations should establish basic standards to protect children from harm, ensure that they are cared for in a healthy environment, and enhance their well-being.
- States may set day care policies which go beyond requirements established in Federal regulations.
- Federal regulations should leave room for decision making and the exercise of judgment by States, operators, and parents of children in day care.
- The Federal government should see that States adhere to Federal day care requirements by monitoring and providing assistance to the States. States should see that operators adhere to Federal requirements by monitoring and providing assistance to day care operators.
- The Federal government should conduct a review of the day care regulations

TABLE OF CONTENTS

	Page
General	
Outline of Regulations	1
Basis and Purpose	1
Definitions	2
Nondiscrimination Requirements	3
Availability of Federal Financial Participation	3
For Centers and Homes	
Program of Activities	5
Training	8
Nutrition	17
Health and Safety	19
Physical Environment	28
Social Services	29
Parent Involvement	30
Group Composition	
For Centers	33
For Homes	42
State Agency Administration	
Monitoring	43
Rates of Payment	44
Future Review of Regulations	46
State Agency Advisory Council	47
State Agency Waiver	48
Effective Date	49

PART 71—HEW DAY CARE REQUIREMENTS

Subpart A—General

Sec.

71.2 Basis and purpose.
71.4 Definitions.
71.6 Compliance with nondiscrimination requirements.
71.8 Availability of Federal financial participation.

Subpart B—Day Care Center

71.10 Program of activities for children.
71.12 Training.
71.14 Nutrition.
71.16 Health and safety.
71.18 Physical environment.
71.20 Social services.
71.22 Parent involvement.
71.24 Group composition.

Subpart C—Day Care Home

71.30 Program of activities for children.
71.32 Training.
71.34 Nutrition.
71.36 Health and safety.
71.38 Physical environment.
71.40 Social services.
71.42 Parent involvement.
71.44 Group composition.

Subpart D—State Agency Administration

71.56 Monitoring.
71.58 Rates of payment.
71.60 Future review of day care regulations.
71.62 State Agency Advisory Council.
71.64 State Agency waiver.
71.66 Effective date.

Authority: Title XX of the Social Security Act, Section 2002(a)(9)(B), 42 U.S.C. 1397a(a)(9)(B); and Title V of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (Headstart-Follow Through Act), Section 582(d), 42 U.S.C. 2932(d).

Subpart A—General

§ 71.2 Basis and purpose.

(a) This part sets forth the requirements that State agencies and day care facilities must meet as the conditions for the receipt by State agencies of Federal Financial Participation (FFP) in the costs of child day care services under the following HEW assisted programs:

(1) Social Security Act.

(i) Title IV–A (Social Services to Guam, Puerto Rico, the Virgin Islands, and the Northern Marianas; and the Work Incentive Program (WIN)).

(ii) Title IV–B (Child Welfare Services).

(iii) Title XX (Social Services);

(2) Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963;

(3) Developmental Disabilities Services and Facilities Construction Act of 1970;

(4) Developmentally Disabled Assistance and Bill of Rights Act of 1975 (Developmental Disabilities Special Projects).

(b) This part implements Title XX of the Social Security Act, Section 2002(a)(9)(B), 42 U.S.C. 1397a(a)(9)(B), and Title V of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (Headstart-Follow Through Act), Section 582(d), 42 U.S.C. 2932(d). These sections authorize the Secretary to prescribe requirements to govern the provision of day care services under HEW assisted programs.

- Requirements (45 CFR 228) for Title XX as well as requirements for Day Care (45 CFR 71) must be met for all Title XX funded day care activities.

§71.4 Definitions.

In these regulations, the term:

***Attendance* means the number of children present at the facility.**

***Caregiver* means a person who provides direct care, supervision, and guidance to children in a day care facility.**

***Day care* means the care, supervision, and guidance of a child, on a regular basis, for periods of less than 24 hours per day, in a place other than the child's own home.**

***Day care center* means a place in which day care is provided to more than 12 children.**

***Day care home* means a private residence in which day care is provided to 12 or fewer children.**

***Early and Periodic, Screening, diagnosis and Treatment (EPSDT)* means a component of each State's medical assistance program mandated under title XIX of the Social Security Act (Medicaid) which provides preventive child health services to eligible low income children.**

***Group* means a cluster of children assigned to one or more caregivers.**

***Group size* means the total number of children assigned to one or more caregivers.**

***Scheduled Enrollment* means the number of children expected to be in attendance for any day or for some period of time during the day.**

***State Agency* means the agency that receives Federal funds for day care and that has ultimate responsibility for the conduct of the day care services program.**

Discussion

Caregivers include all persons who provide (with or without compensation) at some period of the day direct care, supervision, and guidance of children in a day care center or home. This includes part-time employees, volunteers, directors, and substitutes as well as staff who are not normally caregivers (such as bus drivers and cooks) who provide direct care for any part of the day.

A technical amendment to the Day Care Regulations will be published in the Federal Register to include day care facilities serving 12 or less children located in other than a private residence. These facilities must meet the day care home requirements (except that the physical environment requirements for centers will apply - Section 71.18).

§ 71.6 Compliance with nondiscrimination requirements.

The following HEW regulations apply to services provided under this part:

45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health, Education, and Welfare's Implementation of Title VI of the Civil Rights Act of 1964.
45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

§ 71.8 Availability of Federal financial participation (FFP).

(a) FFP is available in the costs of child day care services, only if the care meets the requirements of this part.

(b) The care is considered to meet the requirements of this part only if:

(1) It is provided by a facility which:

(i) Meets State standards for licensing, registration, certification, or approval; and

(ii) Has been approved by the State agency as meeting the requirements of this part, or has submitted to the State agency a plan of correction acceptable to the State agency for any requirement that the facility has been found not to meet. The State agency may accept a plan of correction only if the plan specifies a reasonable time period for meeting the requirements of this part. The facility must meet the requirements of this part within the time period specified in its plan of correction; and

(2) The State agency meets its requirements as provided in this part, or the State agency has submitted to the Secretary a plan of correction acceptable to the Secretary for any requirement that the State agency has been found not to meet. The Secretary accepts a plan of correction only if the plan specifies a reasonable time period for meeting the requirements of this part. The State agency must meet the requirements of this part within the time period specified in its plan of correction.

Intent

The intent of this requirement is to allow States and providers reasonable periods of time to achieve compliance with the regulations.

DISCUSSION

The Federal government has established the goal of raising the quality of federally funded day care by establishing a cooperative role with States to help them come into compliance with the regulations. Section 71.8 provides a new definition of the conditions day care providers and State agencies must meet to receive FFP. Under Title XX FIDCR, a facility or State agency found out of compliance could not receive matching federal funds. This new provision allows FFP to continue where a provider or State agency found out of compliance submits a plan of correction which must include a specific date or "reasonable period of time" by which compliance would be achieved. FFP will be disallowed only if corrections are not accomplished by the date established in the plan.

The regulations specify, therefore, that the State role is to monitor and, where deficiencies are identified, to require a provider to submit a corrective action plan acceptable to the State agency. Whether a plan of correction is acceptable is a matter for State agency discretion. Each plan must specify, however, a reasonable period of time within which requirements would be met.

The intent of this regulation is not to allow the "waiver" by State agencies of any Federal day care requirements. Rather, this requirement allows for the continuation of FFP for a reasonable period of time with respect to facilities which may not fully meet Federal standards, but which evidence a clear intent to meet all standards as promptly as possible and under a fixed time schedule. The requirement provides State agencies with reasonable opportunities to provide technical assistance to providers to improve their programs before HEW funds are withdrawn.

It is suggested that States institute a grievance procedure for providers who contest a monitoring report. A body outside the State agency, perhaps the Advisory Council, might serve to respond to grievances.

The Federal role in regard to the State agency is the same as that outlined for the State in regard to the provider. The guidelines for negotiating a corrective action plan with a State agency which defines a "reasonable period of time" will be included in the monitoring guides. While the regulations do not specify any Federal role for assisting States and providers to meet the regulations after a corrective action plan is accepted, the policy assumptions on which the regulations are based lead to the concept of an active Federal technical assistance role as a part of the overall corrective action strategy.

Corrective actions plans should be kept on file along with update and resolution reports. Corrective action plans must include dates by which compliance is to be achieved. Reasonable periods of time should be determined by the seriousness of the deficiency. Guidelines for establishing reasonable periods of time are to be included in the monitoring and corrective action guide to be available in the Fall of 1980. Any situation causing an imminent risk to the health or safety of the children in a facility must be corrected at the time it is discovered at least to the level at which the risk is eliminated.

Each corrective action plan should remain on file for three years after compliance is achieved.

Subpart B—Day Care Center

§ 71.10 Program of activities for children.

(a) *Day Care Center.* A day care center shall establish a planned program of developmentally appropriate activities which promotes the intellectual, social, emotional, and physical development of the children it serves. The planned program shall be in writing and shall be made available to parents. The plan shall contain a description of activities children engage in and how those activities meet their developmental needs, including the special needs of children in the center who are multilingual or handicapped.

(b) *State Agency.* The State Agency shall provide information and technical assistance to day care centers on establishing a planned program of developmentally appropriate activities.

Subpart C—Day Care Home

§ 71.30 Program of activities for children.

(a) *Day Care Home.* A day care home shall establish a planned program of developmentally appropriate activities which promotes the social, intellectual, emotional, and physical development of the children it serves, including any multilingual or handicapped children in the home.

(b) *State Agency.* The State Agency shall provide information and technical assistance to day care homes on establishing a planned program of developmentally appropriate activities.

Intent

This requirement is intended to ensure that day care programs are not merely custodial, that they contribute to all aspects of the children's development. No specific content of a day care program is mandated in order to provide maximum flexibility to facility operators, and to States. The State agency is free to specify more detailed requirements for an acceptable program of activities. Some States, for example, currently mandate the availability of indoor and outdoor activities and of appropriate toys and materials.

Discussion

Under these requirements both centers and homes must have a planned program of developmentally appropriate activites. Each center must have available for parents a written plan for a program of activities which meets the developmental needs and the special needs of the children it serves. The plan must include both an outline of typical daily activities and a description of how those activities meet the needs of the children served. The plan, to be available to parents in centers, should either be posted or appear in a handbook, newsletter, or other handout given to parents. A day care home's plan need not be written. Evidence of a day care home's plan must be gathered through discussion with the provider and observation of the program.

A planned program of activities may include the following:

- Conversation among children and caregivers;
- A pattern of daily activities which children can count on;
- An opportunity for child initiated play;
- Time for rest and play, including outdoor play when possible;
- Participation in a variety of activities, such as cooking, looking at books and magazines, taking walks, playing games and singing songs;
- An adequate supply of play materials for all children;
- Opportunities for school-aged children to participate in normal neighborhood activities;
- Opportunities for infants to crawl about freely;
- Holding and talking to infants;
- Feeding each infant according to his or her schedule; and
- Holding the infant while feeding.

It is recommended that in developing and reviewing a program of planned activities, each day care provider give careful consideration to the concerns of parents, the unique culture of the communities children come from, the individual needs of children who are developmentally disabled or otherwise handicapped.

State agency technical assistance may include:

- Purchasing, providing or arranging consultation with a day care program specialist for day care centers; and
- Making manuals, pamphlets, and materials available to day care facilities to assist them in developing good programs in day care.

It is recommended that each State agency establish or support local day care resource centers which loan equipment and materials to day care centers; and make available to day care centers information about community resources.

HHS will make available:

- o Research findings about the development of children and good day care programs; and
- o Guides and publications describing model programs of activities.

Publications are available from the Administration for Children, Youth and Families, HHS.

§ 71.12 Training.

(a) *Day Care Center.* (1) A day care center shall provide to newly hired caregivers a one week on-site orientation to the day care program during the first week of employment. The orientation must address at a minimum—

(i) Emergency health and safety procedures at the center;

(ii) Any special health or nutrition problems of the children assigned to the caregiver;

(iii) Any special developmental needs of the children assigned to the caregiver;

(iv) The planned program of activities at the center; and

(v) Meal patterns at the center.

(2) Each caregiver without a nationally recognized child development credential appropriate for the age of the children cared for by the caregiver shall regularly participate in specialized training related to child care. Caregivers shall begin to participate in specialized training within a reasonable period of time after April 1, 1981. Caregivers hired after April 1, 1981 must begin to participate in training within six months of employment.

(b) *State Agency.* (1) The State Agency shall establish and implement a statewide plan for providing or purchasing training for all center caregivers. The plan must specify the nature and extent of the training required for caregivers and address the following subjects:

- Child Growth and Development.
- Child Care Programming and Activities.
- Health and Safety Practices.
- Nutrition and Good Eating Habits.
- Design and Use of Physical Space.
- Working with Parents.
- Community Health and Social Service Resources.
- Day Care for Multilingual Children.
- Day Care for Handicapped Children.
- Handling Behavior Problems.

(2) The State Agency shall periodically assess its statewide training program for center caregivers and report to the Secretary on the effectiveness of this program by March 30, 1984.

§ 71.32 Training.

(a) *Day Care Home.* Each caregiver without a nationally recognized child development credential appropriate for the age of the children served in the home shall regularly participate in specialized training related to child care. Caregivers shall begin to participate in specialized training within a reasonable period of time after April 1, 1981. Caregivers assuming caregiving duties after April 1, 1981 must begin to participate in training within six months of assuming caregiving duties.

(b) *State Agency.* (1) The State Agency shall establish and implement a statewide plan for providing or purchasing training for all day care home caregivers. The plan must specify the nature and extent of the training required for day care home caregivers and address the following areas:

- Child Growth and Development.
- Child Care Programming and Activities.
- Health and Safety Practices.
- Nutrition Practices and Good Eating Habits.
- Design and Use of Physical Space.
- Working with Parents.
- Community Health and Social Service Resources.
- Day Care for Multilingual Children.
- Day Care for Handicapped Children.
- Day Care Home Administration.
- Handling Behavior Problems.

(2) The State Agency shall periodically assess its statewide training program for home caregivers and report to the Secretary on the effectiveness of the program by March 30, 1984.

Intent

The intent of this requirement is to ensure that children are cared for by individuals who develop and sustain the skills necessary to meet the children's needs. It should be noted that the requirements are the same for center and family home caregivers with the exception that no orientation is required for family day care home providers. However, family day care home systems often provide an orientation and the intent of these regulations is not to discourage this practice.

Discussion

CENTER REQUIREMENTS

Orientation

Orientation is necessary for all new caregivers1/ in a facility because it is important for the caregiver(s) to understand the facility's operating philosophy, policies regarding health, safety and discipline, daily schedules and any special health (physical and emotional) or nutrition problems of the children with whom they will work. Any newcomer - regardless of prior experience - needs this information.

The purpose of the orientation is to prevent any harm to children from poorly prepared caregivers who are often not only new to the center but are new to the task of caring for children in a group.

The orientation will be conducted during the first week of employment. The director and/or other supervisory personnel may conduct the orientation. Outside trainers may be used as well or in lieu of center staff. Each center has flexibility in designing the orientation, as long as the five required topics are addressed and the purpose of the orientation has been met. Other topics can, of course, be included. Orientation will vary among centers.

The regulation will allow the caregivers to assume caregiving duties and thus be included in the staff/child ratio and to receive a salary during the orientation period. Anytime the caregiver is not in attendance with the children, a substitute is needed. The reason for including new caregivers in the staff/child ratio is that many centers are not in a position to hire full-time substitute caregivers to comply with ratio requirements while the new caregiver(s) are receiving an orientation. Newly hired caregivers should be carefully supervised during the orientation period.

Some centers are not in a position to free up staff to provide a full day, one week orientation for each new caregiver upon arrival at the center. However, each center must fashion an orientation which best accomplishes the purpose stated above. For example, some centers may offer the new caregiver(s) an hour to two of daily instruction for one week on the 5 topics included in the requirements while carefully supervising them during the remainder of the time. Other centers may choose to offer more instruction each day. Some may offer forty hours of instruction during which the caregivers assume no caregiving responsibilities.

A center should record and file its plan for caregiver orientations, including the date, topic, and instructor.

1/ A caregiver is defined as any person who provides (with or without compensation) at some period during the day direct care, supervision and guidance of children in a day care facility. This includes part-time employees, volunteers, directors and substitutes, as well as staff who are not normally caregivers (such as bus driver and cooks) who provide direct care for any part of the day. Volunteers must provide care for at least 10 hours a week to be counted as a caregiver in the staff/child ratio.

CENTER AND HOME REQUIREMENTS

Specialized Training

The State agency should provide day care centers, family home networks, and family home providers with a list of nationally recognized age-appropriate credentials. The list will be based on examples cited in the guide but may be modified to identify the proper local names for training credentials, certificates and degrees. The State agency should request a determination from the Regional Office if there is question about the acceptability of a type of credential. The provider should check with the State agency if a question arises about the appropriates of a credential. Any caregiver without a credential appropriate to the ages of the children for whom they will care must participate in training.

Examples of Nationally Recognized Child Development Credentials

Credentials appropriate for those working with infants and toddlers:

- o B.S. or A.A., or graduate degree in nursing
- o Bachelor or graduate degree in infant psychology
- o Bachelor or graduate degree in Education or Human Development (with major credits earned in infant, toddler development)
- o An age-appropriate Montessori teaching credential

Credentials Appropriate for those working with pre school age children:

- o B.S. or A.S., or graduate degree in Education (with major credits in Early Childhood Education)
- o Bachelor or graduate degree in Home Economics (with major credits earned in Early Childhood Education)
- o Bachelor or graduate degree in Psychology, Human Development, or Social Work (with major focus in child development)
- o Child Development Associates (CDA) credential. (This is appropriate for work with preschoolers in center settings.)
- o State's Early Childhood Education teaching certificate
- o An age-appropriate Montessori teaching credential

Credentials Appropriate for those working with school age children:

- o B.S. or graduate degree in Elementary Education, Physical Education or Recreation
- o Bachelor or graduate degree in Psychology, Human Development or Social Work with the major credits earned in area of child development ages 6-12 or (if the caregiver will be working with adolescents) in adolescent development
- o An age-appropriate Montessori teaching credential

Centers and family day care home networks should identify caregivers without age appropriate credentials and inform them of the time and location of training programs. The State agency is responsible for ensuring that family home providers who are not part of the network, and who are caring for federally subsidized children are notified of this training requirement. The State agency must provide the information to the centers, family home networks, and independent family homes. Training should begin within a reasonable period of time after April 1, 1981. Caregivers hired after April 1, 1981, should begin training within six months after employment. Caregivers hired before April 1, 1981, should begin training by October 1, 1981.

STATE AGENCY REQUIREMENTS

State Plan

The State agency shall establish and implement a statewide plan for providing or purchasing training for all center caregivers and all family home providers. The plan must specify the nature and extent of the training required and must address the following subjects:

- o Child growth and development (appropriate to the ages of children in care)
- o Child care programming and activities
- o Health and safety practices
- o Nutrition and good eating habits
- o Design and use of physical space
- o Working with parents

- o Community health and social services resources
- o Handling behavior problems
- o Day care for handicapped children (when appropriate. However, several studies indicate that this will be needed in most locales because there are a significant number of children with hearing and clinically significant speech and language impairments in the Title XX day care population. These are the two most common handicaps which will be confronted and for which appropriate caregiving skills will be needed.)
- o Day care for multilingual children (when apropriate)
- o and (for family home providers) Day Care Home Administration

The subject areas listed in this section were identified in the report on The Appropriateness of the FIDCR as areas where most caregivers in family day care as well as centers need support to upgrade present practice and knowledge.2/ Continuous participation by caregivers in training related to child growth and development is critical to quality day care. Although these regulations only require that caregivers without an age-appropriate credential must participate in specialized (in-service) training, the intent of the regulations is not to discourage participation by those who possess an acceptable credential.

This plan can also be part of any other training plan mandated by other State or Federal regulations or statutes.

The State agency should make certain that training of all types which meet the criteria detailed in the State plan are available across the State for caregivers in family day care homes and centers. However, many centers and family home networks do provide training now. A "State mandated" training program or activity should not necessarily supplant or be imposed in addition to this training. The State agency should review operating training programs or activities. Those which satisfy the criteria specified in the plan will be approved as meeting the training requirement. Training activities which are presently employed need to be carefully coordinated between the State agency and the provider agencies. Centers and family home networks are administratively responsible for their staffs' performance. Training is a function which affects staff performance. It is important then that the State agency coordinate the training plan with provider agencies.

States are encouraged to begin to develop plans that identify the competencies expected for caregivers ranging from aides to directors (who in many centers function as caregivers). These competencies would reflect skills and knowledge needed to work with children at each developmental stage. This task would not in all likelihood be completed in the first year because the State will probably continue to refine, add and subtract from this set of competencies. However, this effort would be one way a State could develop a set of criteria against which it could judge training programs which are already operating and identify gaps in training which need to be filled.

2/ The Appropriateness of the Federal Interagency Day Care Requirement was published by HEW and submitted to Congress in 1978. It is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The stock number is 017-000-00211-2.

The training requirement will assist the provider in the successful implementation of all the other requirements. For example, a caregiver who has developed some interpersonal communication skills and understanding of the parental role in the child's development will be more receptive and willing to implement the parent involvement requirement.

In addition to the regulated day care elements, there are many elements in a day care program which effect the quality of the care received and affect child development. However, it was decided that rather than specify these elements in detail and attempt to regulate them it would be far wiser to assume that caregivers who have received training in the ten areas mentioned above will incorporate these elements in the day care program. For example, certain elements of health care and sanitary practices are not included in the new requirements as they were in the 1968 FIDCR. These elements are: (1) the ability to evaluate each child for indication of illness; and (2) knowledge of how to minimize hazards of infection and accidents. These are important elements. It is assumed that the training for health and safety practices will cover these elements.

The intent of this requirement is not that the State will provide training equivalent to the level of that of the nationally recognized credentials. The intent is instead that all caregivers, as a minimum, will receive training in each of the listed areas at a level appropriate to their needs. A caregiver's needs are determined by the ages and special needs of the children for whom the caregiver provides care, the amount of responsibility the caregiver will have in the day care setting, the day care setting itself, and the previous training and experience of the caregiver. Any State plan should address the different needs of the caregivers to be trained. Each State is given the flexibility to fashion a training plan to meet its own particular needs and conditions. Also, it may develop a single plan to encompass training for both family home and center caregivers. Ot it may develop a separate plan for each.

The intent of this requirement is also that training for caregivers be innovative and flexible. Examples of methods for the delivery of specialized training are:

- Training sessions offered by State agency staff;
- Television courses in a child related subject;
- Specialized training sessions at a day care facility led by a child care or child development specialist. (This person or persons may be either a consultant brought in from outside the facility or may be a trainer or lead teacher with appropriate child development credentials who is on the facility's staff);
- Training provided by a family day care system or association;
- Child care or child development courses offered by a college, vocational technical school or other adult education program;
- Training for a Child Development Associates (CDA) credential;
- A series of seminars or workshops sponsored by a non-profit organization.

Participation of Providers and Caregivers in the Development of the Plan

It is a considerable task to develop a training plan which is innovative and flexible, able to tap into existing training resources as well as develop new resources where gaps exist and lastly which encompasses the training needs of a varied group of caregivers working with a wide age range of children. This responsibility rests with the State agency which may find itself charting unknown territory. States may choose to involve in the development of the plan center staff, family day care providers, appropriate agency personnel, parents and child development specialists who represent the full spectrum of child care programs in the State. Public comment on the NPRM overwhelmingly endorsed the active involvement of providers and day care personnel as one means of promoting a State training plan which accurately identifies needs. Such involvement will result in better coordination of training efforts between the State agency and centers and family day care home networks.

Length and Duration of Training

The State training plan must specify the nature and extent of the training required for caregivers. The regulations do not prescribe a minimum number of training hours. There is no persuasive evidence which suggests the number of hours which would be appropriate for assuring a minimum level of quality training in every State. It is up to each State to specify the number of hours of training each category of caregiving personnel must participate in annually. At a minimum training must be offered at least once each year. (Plans may require more frequent training on a monthly or bi-monthly, or even weekly basis.) As previously stated, the intent of this requirement is to give priority to assuring that each caregiver has received training in the cited curriculum areas. Once such training has been provided, a caregiver's regular participation in training can consist of less frequent refresher training, more advanced training, or training in other specialized areas. The training provided for in the State plan should exist on a continuum allowing caregivers to develop or improve skills and understanding for as long as they remain in child care.

Training for Caregivers with an Age Appropriate Credential

Many caregivers with an age-appropriate child development credential will want to participate in regular training in order to refresh or upgrade their skills and knowledge. Under the training requirement the State agency is to provide and purchase training for all center and family home caregivers. While the priority for training must be placed on providing training for uncredentialed caregivers, the Department certainly encourages in-service training for credentialed caregivers. The State plan must take into account the demand for training and carefully allocate resources across categories of caregivers according to their training needs.

State Must Provide or Purchase

The States are responsible for developing a plan which provides or purchases training for all family home and center caregivers. A State effort which assures that training is available to all caregivers who are required by these regulations to participate in training does not necessarily mean that the State need pay for all such training. In instances where caregivers are receiving training certified as meeting the criteria of the State plan, the State need not assume the cost of their training if it is being met by some other source. There will be a great many caregivers, who require training but are not receiving any. The State will have to determine this number and estimate whether existing training can be found for these individuals or whether it must be developed, and finally, what the costs of development will be.

States will then have to determine where funds can be found to pay for this training. States should be as creative as possible in identifying sources of funding. For example, a contribution from another public agency may be made to the title XX agency to be used as the non-federal match without an actual transfer of funds. Expenditures for goods or services that are essential to the tittle XX program may be certified to that program as documented costs incurred by the contrilbuting public agency. Funds of other programs, such as CETA or the Department of Education might be available to finance some of the training activities but not to make up the non-federal matching share. Arrangements can be negotiated with provider agencies to share in the cost of a trainer or which allows sharing costs by the State and facility and/or caregivers for training arrangements. The latter may be more appropriate for training more advanced than the basic core training package.

A compliance issue arises for those States where a gap in resources exists which limits implementation of the State training plan and compliance with this training requirement. This problem of compliance must be worked out jointly by the State and HHS. At that time estimates can be developed of what and how long it will take to come into compliance with the training requirement.

The plan itself should function as an "ideal" blueprint of what training should encompass. A minimum floor would have to be identified in the plan which would include training sufficient in scope in each of the areas listed in the requirement to provide caregivers with skills and knowledge to enable them to work effectively with children. If this approach is used the State will always have the blueprint in front of them to help refine and improve the quality of training being offered each year. One way of promoting quality is to encourage a variety of approaches to training differing from the traditional college classroom courses. These training approaches should be carefully observed and evaluated and those with limited effectiveness should be selected out. This diversity is needed if relevant training is to be found for family day care home caregivers and for caregivers working with infants and toddlers.

In cases where little relevant training exists (such as training for caregivers working with children under age three) or where training is not geographically convenient, the State agency will have to encourage the development of program and materials. This can be done in a variety of ways. For example, the agency can use title XX training grants as seed money to develop new programs; it can encourage the State community college or college system to develop relevant training programs; or the State agency can assist centers to form a network for training purposes. In this instance, the centers could share in the cost of the trainer(s).

Training of Directors

Directors who provide some direct care to children may participate in caregiver training with the costs picked up by any one of a number of federal programs, including title XX training funds.

The intent of these regulations is not to discourage administrative training for directors. One of the most frequent comments received from the day care public has been that directors need administrative training to do their jobs more effectively. It is strongly recommended that States promote such training. The costs can be included as administrative costs in the title XX contracts negotiated between the center and the State agency.

Assessment of the Statewide Training Program

A training plan and related training activities should be responsive to the needs of caregivers and the caregiving facilities. This State assessment requirement was added based on public comment on the proposed rules suggesting that recipients of training evaluate the training received and that a State use such evaluations to modify its training plan. It is expected that by March 3, 1984, each State will have submitted an assessment of the effectiveness of its training activities. Such an assessment could include a survey to determine what proportion of the caregivers in the State are being reached by State sponsored training activities, the caregivers' and supervisory staffs' evaluation of the training and the degree of unmet need in the State both in terms of numbers of caregivers who have not received training and the quality and quantity of training offered.

§ 71.14 Nutrition.

(a) *Day Care Center.* A day care center shall provide adequate and nutritious meals prepared on a safe and sanitary manner. Breakfast shall be provided at parent request. Lunch and mid-morning and mid-afternoon snacks shall be provided. When children are in care during evening and night hours, the center shall provide an evening meal.

(b) *State Agency.* The State agency shall make the consultative services of a qualified nutritionist or food service specialist available to day care centers.

§ 71.34 Nutrition.

(a) *Day Care Home.* A day care home shall provide adequate and nutritious meals prepared in a safe and sanitary manner. Breakfast shall be provided at parent request. Lunch and mid-morning and mid-afternoon snacks shall be provided. When children are in care during evening and night hours, the home shall provide an evening meal.

(b) *State Agency.* The State Agency shall make the consultative services of a qualified nutritionist or food service specialist available to day care homes.

Intent

The intent of this requirement is to ensure that children in day care receive meals and snacks which meet their nutritional needs while in care.

Discussion

Adequate and nutritious meals are those which help meet the child's total nutritional needs and promote sound physical, emotional and social growth. Nutritious meals and snacks may be provided to children in the day care setting through a number of means:

In preparing meals and snacks in the day care center or home, it is important to include foods from the following groups: milk, cheese and dairy products; meats, fish and eggs; fruits, vegetables, cereals and grain products. Following are several guides which are useful in planning for food and nutrition services in day care: A Planning Guide for Food Service in Child Care Centers, FNS-64, U.S. Department of Agriculture, 1980; Day Care - Serving Preschool Children, DHHS Pub. (OHD) 74-1057, 1974; and Nutrition and Feeding of Infants and Children Under Three in Group Day Care, DHHS Pub. (HSM) 73-5606, 1973.

Day care centers and homes should have their food and nutrition services reviewed by a nutrition consultant. It is important to recognize the personal, cultural and ethnic food preferences of the children. Special consideration should be given to the nutritional needs, feeding schedules and routines of infants. Weekly menus for meals and snacks should be available to parents so that they will know what their children are eating in the day care facility.

The intent of the requirement that breakfast be provided at parental request is to ensure that all children in the day care facility receive an adequate and nutritious breakfast. Parents are to request this meal in advance and on a scheduled basis to allow the day care provider to plan meals and purchase food. Parents should be informed upon enrollment of their responsibility to request breakfast in advance.

Parents who choose to do so may provide their children's meals. A provider should work with parents and/or supplement meals as needed to help ensure that children are receiving adequate and nutritious meals.

To ensure that meals are prepared in a safe and sanitary manner, appropriate State and local sanitation and health standards regarding service, preparation, and storage of food must be met.

State agencies can assist day care providers by:

- o Obtaining and disseminating information on child nutrition to day care providers from State and local health departments, State departments of education, Project Head Start, State Cooperative Extension Service, and State professional organizations such as the Pediatrics Society and State Dietetic Association.

- o Furnishing all day care providers guidance on food and nutrition services including sample menus.

- o Helping and encouraging eligible day care programs to participate in the USDA Child Care Food Program.

- o Providing or arranging for consultation from a qualified nutrition specialist who might be available from a State or local health department or State or local department of education.

The Federal Role:

The U.S. Department of Agriculture will provide financial assistance for meals and snacks to eligible centers and homes through the Child Care Food Program. Information on obtaining assistance from the USDA can be obtained from the Director, Child Care Food Program, Division of Food and Nutrition Service, U.S. Department of Agriculture, Washington, D. C., 20250.

USDA also provides publications, assistance in obtaining food preparation equipment, and information about nutrition. DHHS through programs such as Head Start and the Title V Maternal and Child Health Program also provides publications, information about nutrition and technical assistance about a nutrition program for day care.

§ 71.18 Health and safety.

(a) *Day Care Center.* (1) A day care center shall have on record for each enrolled child whose parents do not object on religious grounds, a statement from a licensed health practitioner that—

(i) Describes any special precautions for diet, medication, or activity;

(ii) States that the child has received immunizations in accordance with recommendations of the U.S. Public Health Service or the American Academy of Pediatrics; and

(iii) States that the child has received a health assessment in accordance with the standards of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(2) The statement for each child must be on record within 60 days of enrollment, and must be updated according to the recommended schedule for routine health supervision of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(3) A day care center shall have plans to respond to illness and to emergencies including fire, serious injury, and ingestion of poison. The plans must be in writing.

(4) A day care center shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physican. Medications shall be kept in labelled containers out of the reach of children.

(5) A day care center shall provide information to parents as needed concerning child health services available in the community, and shall assist parents in obtaining the health services.

(b) *State Agency.* (1) The State agency shall provide information to each day care center about the availability of child health services in the community and about how the services may be obtained.

(2) The State agency shall establish and maintain health standards for day care center personnel.

(3) The State agency shall make arrangements so that HEW funded children in day care centers who are eligible for Federal, State, or locally funded health services receive those services when needed.

§ 71.36 Health and safety.

(a) *Day Care Home.* (1) A day care home shall have on record for each child enrolled in a day care home whose parents do not object on religious grounds, a statement from a licensed health practitioner that—

(i) Describes any special precautions for diet, medication, or activity;

(ii) States that the child has received immunizations in accordance with recommendations of the U.S. Public Health Service or the American Academy of Pediatrics; and

(iii) States that the child has received a health assessment in accordance with the standards of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(2) The statement for each child must be on record within 60 days of enrollment, and must be updated according to the recommended schedule for routine health supervision of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(3) A day care home shall have plans to respond to illness and emergencies including fire, serious injury, and ingestion of poison.

(4) A day care home shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physician. Medications shall be kept in labelled containers out of the reach of children.

(5) A day care home shall provide information to parents, as needed, concerning child health services available in the community, and shall refer parents to appropriate health services agencies.

(b) *State Agency.* (1) The State agency shall provide information to each day care home about the availability of child health services in the community and about how the services may be obtained.

(2) The State agency shall establish and maintain health standards for day care home personnel.

(3) The State agency shall make arrangements so that HEW funded children in day care homes who are eligible for Federal, State, or locally funded health services receive those services when needed.

Intent

The intent of this requirement is to protect children in day care from risk to their health and safety, and to assure that children receive needed health services.

Discussion

The intent of requiring health assessments and immunizations for each child receiving day care is threefold: (1) it protects that child and the other children in the day care setting from certain infectious diseases; (2) it assures that caregivers know whether children have serious health impairments that require special precautions or attention while in day care; and (3) it assures a healthier, safer overall day care experience for each child.

A center or home must have on file for each child within 60 days of enrollment a statement from a licensed health practitioner (defined by the State medical practices requirements) that:

(i) Describes any special precautions for diet, medication or activity. In the case of most healthy children, the physician will need only indicate that there are no special precautions to be taken. The day care provider has a responsibility to implement any precautions noted in this statement.

(ii) States that the child has received immunizations according to the recommendations of the Public Health Service or the American Academy of Pediatrics, which at publication of these requirements, are identical. Children whose parents object on religious grounds (i.e., Jehovah's Witnesses) are exempted from these requirements.

The "Recommendations for Preventive Health Care," included in this section, indicates which immunizations are appropriate according to the child's age. This chart is reproduced from the American Academy of Pediatrics' Standards for Child Health Care, Third Edition.

Presently enrolled children should have on record that they have had age-appropriate immunizations, and health assessments within 60 days after the effective date of these requirements.

Most immunizations are usually required before the child is three, but day care providers may encounter four and five-year-old children who have never been immunized or who have received only one or two of the required vaccinations. These children must receive, at appropriate intervals, all the required dosage in order to be protected against communicable disease.

(iii) States that the child has received an appropriate health assessment. The health assessment is a standard well-child exam which includes health history, physical exam, TB testing when appropriate, simple hearing and vision screening at some ages, referral to a dentist after the age of three, and, at times, some tests appropriate to the child's age and living conditions (e.g., a test for lead poisoning).

The Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program makes free health assessments, immunizations and other preventive health services available to all Medicaid-eligible children and in a few States to children beyond simply those who are eligible for Medicaid. State and local public health departments are authorized under Title V (Maternal and Child Health Services) of the Social Security Act to make similar services available to children.

As part of the EPSDT program children are supposed to receive health assessments which include certain required screenings.

Health assessments offered at public health clinics usually meet the standards of the Public Health Service, which are the same as those of the American Academy of Pediatrics.

Under these requirements, children in day care who receive services from a private physician or health program must receive immunizations and health assessments that meet defined standards, and private practitioners can choose for the non-EPSDT child whether to provide a health assessment that meets EPSDT standards or those of the private medical standard-setting body, the American Academy of Pediatrics. These standards are similar although there is more flexibility in the AAP assessment standards. School immunization records, signed by a health practitioner, would also meet the immunization requirement section of the regulations.

State agencies and providers should make every effort, in the case of presently enrolled children who have had health evaluations but for whom no health statement are on file, to obtain a statement for this previously done evaluation. Providers could send an appropriate form and ask that the documentation required by these regulations be supplied. This will avoid unnecessary visits to a health care provider.

While formal communications between parents and day care providers about special needs, allergic reactions or other health conditions are not required under these regulations, this type of exchange of information about the child is a generally accepted part of enrollment procedures in good day care, and HHS endorses this practice. Helpful, concrete information about health problems, communicated by

parent and physician to the day care provider, means better daily child care -- and in an emergency, could be vital to the child's well-being. The provider should observe discretion and confidentiality in handling information received about the child.

So that full protection against infectious disease can be achieved and age appropriate screening for health conditions performed, children will be expected to receive further immunizations and health assessments as they continue on in day care, in accordance with either the routine preventive health care schedule for EPSDT, or that adopted by the American Academy of Pediatrics. For children over three, health assessments are required every two years. For children under three, they are required more frequently. The chart following shows when health assessments should be updated.

American Academy of Pediatrics, Standards of Child Health Care, Third Edition

RECOMMENDATIONS FOR PREVENTIVE HEALTH CARE[1]

The "Recommendations for Preventive Health Care of Children and Youth"[2] represents a guide for the care of well children who receive competent parenting, who have not manifested any important health problems, and who are growing and developing satisfactorily. Circumstances which may indicate the need for additional visits are outlined in the accompanying text.

AGE[3]	2-4 Wks.	2-3 Mos.	4-5 Mos.	6-7 Mos.	9-10 Mos.	12-15 Mos.	15-19 Mos.	23-25 Mos.	36-37 Mos.	5-6 Yrs.	8-9 Yrs.	11-12 Yrs.	13-15 Yrs.	16-21 Yrs.
HISTORY														
Initial	At first visit													
Interval	At each visit													
MEASUREMENTS														
Height & Weight	At each visit													
Head Circumference	✓	✓		✓		✓		✓						
Blood Pressure[4]									✓	✓	✓	✓	✓	✓
SENSORY SCREENING														
Sight[5]	✓	✓		✓					✓ OR ✓		✓	✓	✓	
Hearing[6]				✓					✓ OR ✓					
DEVELOPMENTAL APPRAISAL[7]	At each visit													
PHYSICAL EXAM	At each visit													
PROCEDURES[8]														
Immunization		✓	✓	✓		✓	✓			✓			✓	
Tuberculin Test[9]				✓					✓			✓		
Hematocrit or Hgb				✓					✓ OR ✓			✓		
Urinalysis[10]								✓					✓	
Urine Culture (girls only)[11]									✓	✓	✓			
DISCUSSION AND COUNSELLING[12]	At each visit													
DENTAL SCREENING[13]	At each visit													
INITIAL DENTIST'S EXAM[14]									✓					

1. See text pages 11, 12, 15-21.
2. Committee on Standards of Child Health Care: Recommendations for preventive health care of children and youth. American Academy of Pediatrics, News + Comment (Suppl.), June 1974.
3. If a child comes under care for the first time at any point on the Schedule, or if any items are not accomplished at the suggested age, the Schedule should be brought up to date at the earliest possible time.
4. See Table 1, page 18.
5. See text pages 19 and 20.
6. See text pages 20 and 21.
7. See text pages 18, 19, 21-23. Developmental appraisal is an integral part of each visit. Employ a standardized format at any time there is suspicion of developmental delay. See also Hartlage, L.C., and Lucas, D.G.: Mental Development Evaluation of the Pediatric Patient. Springfied, Illinois: Charles C Thomas, 1973.
8. See text pages 11-36; Appendix E, pages 120-124; and Report of the Committee on Infectious Diseases, ed. 17, American Academy of Pediatrics, Evanston, Illinois, 1974.
9. May be indicated yearly in certain areas and populations. See Report of the Committee on Infectious Diseases, ed. 17, American Academy of Pediatrics, Evanston, Illinois 1974.
10. At least 5-test dipstick.
11. Taken in the morning. For suggested methods, see Kunin, C.M.: Detection, Prevention and Management of Urinary Tract Infection, ed. 2. Philadelphia: Lea and Febiger, 1974.
12. See text pages 21-31.
13. See text pages 23-26.
14. Subsequent exams as prescribed by dentist.

Key: ✓ to be performed.

Note: The footnotes refer to descriptions of simple office procedures in Standards of Child Health Care.

Dispensing Medications

(a) (4) A day care center or home shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physician. Medications shall be kept in labelled containers out of the reach of children.

The purpose of this requirement is to insure that children do not have access to toxic substances and that medications are not administered improperly.

The safest containers for medications are those with safety-lock closures. Nationally, there has been a marked decrease in the number of children poisoned from ingesting medications since safety-lock closures were required. Day Care Providers might want to purchase and keep on hand a supply of these inexpensive safety containers from their local pharmacy.

Keeping medications out of reach means, at the very least, storing them about adult height, with no means of climbing nearby. The safest way to store medications is with some kind of locked closure-file box or cabinet.

Some medications, of course, need refrigeration and should not be stored in cabinets.

(a) (5) A day care center or home is to provide information to parents as needed concerning child health services in the community. A center must assist parents in obtaining health services. A home must refer parents to appropriate health services.

The information to be provided parents can be obtained from the title XX agency, as well as from the Medicaid and State health agencies. One helpful action that day care centers could undertake would be to inform parents about the availability of Medicaid since some families who are eligible might not even know it. Centers could ask State agencies to send them information and brochures in bulk for distribution to parents.

Assistance in obtaining health services might involve offering to telephone the health agency so as to ease any language, time or other concerns which the parent might have; or the provider could assist by offering to help transport the parent to the health provider if the parent is unable to secure transportation. (EPSDT-eligible children can be transported at the expense of the Medicaid program.) Other day care providers may wish to sponsor parents' meetings to which local health providers come, so that information about locally available disease prevention and health promotion services can be shared.

State Agency Requirements

(b) State Agency

(1) The State agency shall provide information to each day care home about the availability of child health services in the community and about how the services may be obtained.

(3) The State agency shall make arrangements so that HHS funded children in day care homes who are eligible for Federal, State, or locally funded health services receive these services when needed.

Discussion

The regulations are designed to emphasize the central role of the parent in the routine preventive health services of the child. Thus, it is the parent, assisted and supported by both State agency and day care provider who chooses the health care provider and obtains the necessary services.

The State agency and the day care provider should work together to ease obstacles which stand between the parent and the preventive health care children need, particularly when enrolled in day care.

The emphasis here is on use of existing health resources. The child health services required by these regulations are available under many health programs, including:

- Child Immunization Project Grant Program available in all States. Information can be obtained from the State Health Department or the Public Health Service.
- EPSDT (Early and Periodic Screening, Diagnosis and Treatment) run by the Medicaid agency in each State and in which all Medicaid-eligible (and in some States, other children as well) can participate.
- Maternal and Child Health Services, under Title V of the Social Security Act which is administered by State and local health departments, authorizes basic preventive health services, and special efforts such as Children and Youth Programs, Maternity and Infant Care programs.
- Crippled Children's Service also authorized under Title V and run by the State health agency. Each State has a good deal of discretion in defining who qualifies.
- Community Health Centers, directly funded projects which provide comprehensive health care to families within certain urban and rural target areas.
- Migrant Health Centers, directly funded Federal projects which provide comprehensive health care to migrant and seasonal agricultural workers and their families.
- Rural Health Initiative Programs and Health in Underserved Rural Areas--both programs of special outreach. It may well be possible to arrange for a health practitioner to come to rural child care programs under these outreach efforts.

In addition, if a State covers preschool children under State law or under the Education for All Handicapped Children Act (PL 94-142) these programs can be used to provide required health services.

Some States also sponsor preventive child health services through community hospitals.

The best contacts or information about the range of health services available in each State are:

-- The State Health Agency

-- The local Health Planning Agency (HSA) which is charged with the responsibility for coordinating health programs.

The State agency must make the arrangements with the Medicaid agency, with the State health agencies delivering services under Title V, and with other State or local agencies which make health services available to the population of children using FFP day care. State agencies must assure that children who are eligible for those health services receive them when needed. This might be done through:

- o Cooperative agreements with EPSDT, Title V or other programs or agencies; or by
- o Reimbursing a day care center or association or other local agency (such as a coordinating council) for arranging and assuring the provision of health services for eligible children.

Agreements which spell out procedures for how eligible children will be informed about EPSDT, screened and followed-up might be done by the title XX agency under subcontract with the Medicaid agency.

In order to assist the providers in carrying out their role the State agency is required to supply the day care provider with information about preventive health services and where they may be obtained. This information should include descriptions of (1) arrangements which State agencies have made to assure that eligible children receive the necessary health services; and (2) the kinds of linkages that have been established with the State Medicaid agency and health departments. Comprehensive lists of health services available, describing eligibility and payment policies (if any) should be distributed by the title XX agency to day care centers. Such lists may be available at State health agencies, or could readily be compiled in cooperation with State and local health departments and the health planning agencies (HSA's) in each State.

There is no federal requirement, under the day care regulations, that title XX agencies finance health assessments or preventive health services for day care children ineligible for Federal, State or local health services. States are free to set their own policies in this regard. It would be helpful, however, if the title XX agency would notify the local health planning agency of children for whom appropriate services cannot be located, since the HSA might be able to remedy the situation.

One key to building a partnership is in the intake process, when State agency, parent and provider are involved in determining the child's eligibility for day care. Whoever has responsibility for assessing the child's title XX eligibility should inform the parent about the requirement for health assessments and immunizations, determine the child's eligibility for EPSDT, health department, or a State or locally funded preventive health service, and tell the parent where to go to obtain the health assessment or immunizations. Specific assistance should be offered the parent, if he/she so desires, in approaching the health agency and securing the necessary health screening, and any follow-up care that is required. This kind of assistance in securing treatment may be particularly necessary.

The State agency, as part of the ongoing monitoring process, is also responsible for assuring that preventive health services are up to date as required. In the course of routine day care records check for example, it may become apparent that occasional reminders are needed for some day care programs or for some children, so that updated evaluations are obtained.

If State agencies typically delegate intake or other types of social services to day care federations or associations, or day care centers themselves -- or if the State desires to specifically delegate the responsibilities involved in assuring that children receive the health and social services for which they are eligible -- these responsibilities can be included in the State's contract with these programs. Although only the State agency will be able to make State-level cooperative agreements, day care programs, particularly those who relate to more than one center or to both centers and homes, who contract with the State to assume these health services responsibilities will be well-situated to make cooperative arrangements with a full array of local health agencies and providers. This model has been used successfully in Florida (Orlando 4-C), Kentucky (Louisville 4-C), and Michigan.

Health Standards for Day Care Personnel

(b) (2) The State agency shall establish and maintain health standards for day care center and home personnel.

Infectious diseases are transmitted not just from child to child but from staff to child (and child to staff) as well. States have the obligation to protect not just the public health of children and staff in day care, but the larger community as well, for studies have shown that some illnesses can be spread by adults or children who are associated with a day care facility.

Good health standards for personnel include at a minimum initial health evaluation, including evaluation for history of any infectious disease which could easily be transmitted to children during the normal caregiving function (prospective staff members may be a carrier without realizing it) and tuberculosis testing.

Statements from examining physicians should be kept on file at the facility. The statement should include any precautions that may have to be observed and should indicate that the employee is free of any communicable disease or other conditions that might pose a health problem to the children.

§ 71.18 Physical environment.

(a) *Day Care Center.* A day care center shall meet:

(1) State and local requirements for licensing or approval;

(2) State and local codes relating to health, sanitation, and building and fire safety; and

(3) State day care center standards for transportation, swimming, and equipment safety.

(b) *State Agency.* The State agency shall ensure that standards for day care centers that specifically address sanitation, and transportation, swimming, and equipment safety exist in the State.

§ 71.38 Physical environment.

(a) *Day Care Home.* A day care home shall meet—

(1) State and local requirements for licensing, certification, registration, or approval;

(2) State and local codes relating to health, sanitation, and building and fire safety applicable to residential occupancy; and

(3) State day care home standards for transportation, swimming, and equipment safety.

(b) *State Agency.* The State agency shall ensure that standards for day care homes that specifically address sanitation and transportation, swimming, and equipment safety exist in the State.

Intent

The intent of this requirement is to ensure that children in day care are cared for in safe environments. Where a day care home (12 children or less) is operating in other than a private residence, day care center requirements should apply.

Discussion

It is recommended that a State agency:

- Promote the adoption of day care physical environment standards which are reasonably in accord with HHS' Guides for Day Care Licensing.

- In conjunction with local agencies, periodically review and update State and local codes for health, sanitation, fire, and other safety requirements to ensure that the requirements are not contradictory, and that they are appropriate for day care centers and homes.

HHS will make available model licensing codes which address health and safety in day care centers.

§ 71.20 Social services.

(a) *Day Care Center.* A day care center shall provide information to parents, as needed, concerning social services available in the community and shall assist parents in obtaining the social services.

(b) *State Agency.* (1) The State agency shall provide information to each day care center about the availability of social services in the community and about how the services may be obtained.

(2) The State agency shall make arrangements so that HEW funded children in day care centers who are eligible for Federal, State or locally funded social services receive those services when needed.

§ 71.40 Social services.

(a) *Day Care Home.* A day care home shall provide information to parents, as needed, concerning social services available in the community, and shall refer parents to appropriate social services agencies.

(b) *State Agency.* (1) The State agency shall provide information to each day care home about the availability of social services in the community and about how the services may be obtained.

(2) The State agency shall make arrangements so that HEW funded children in day care homes who are eligible for Federal, State or locally funded social services receive those services when needed.

Intent

The intent of these requirements is to assist parents of children in day care in locating and obtaining necessary social services.

Discussion

Both day care centers and homes are required to provide to parents information and referral about State and local social services and how they may be obtained. Providers are to receive such information from the State agency.

Day care centers are further required to assist parents in obtaining social services when necessary. This assistance may include:

- Offering to make an appointment for the parent at the social service agency; or
- Offering to arrange for transportation.

It is suggested that the center staff check back with the parent to ascertain whether services were secured.

To implement this requirement, at least one staff member from each center, each family home provider, and at least one staff member from each family day care system should be familiar with the social services available in the community and State or be able to refer parents to the Title XX agency for such information.

If a social service caseworker is assigned to a family, the day care provider can meet this requirement by referring the parent to that caseworker. This will avoid a duplication of services.

Examples of Making Arrangements for Needed Social Services

As with the health services requirement, this requirement emphasizes making use of existing services. Ways in which a State agency could arrange for social services for eligible children include:

- Providing services included in the State Title XX social services plan to eligible day care children;
- Contracting with day care center or association, a family day care system, association or other local agency (such as a coordinating council or United Way) to link children with needed social services; or
- Making cooperative arrangements with other agencies that provide social services, such as mental health agencies.

The Federal Role

HHS will encourage mental health agencies and social services agencies funded by HHS to cooperate with State agencies responsible for children in day care.

§ 71.22 Parent involvement.

(a) *Day Care Center.* A day care center shall—

(1) Provide parents with opportunities to observe the center and to discuss their children's needs before enrollment;

(2) Offer parents unlimited access to the day care center to observe their children;

(3) Regularly offer parents opportunities to meet with caregivers to discuss their children's needs;

(4) Regularly exchange information with parents about their children and the day care program;

(5) Offer parents, individually and as a group, meaningful opportunities to participate in general program policymaking; and

(6) Provide parents upon request any monitoring reports or evaluations of the center prepared by and received from Federal, State, or local authorities.

(b) *State Agency.* (1) The State agency shall provide information and technical assistance to day care centers on working with parents.

(2) The State agency shall offer parents their choice of day care facility whenever administratively feasible. The State agency shall make a copy of the HEW day care requirements available to parents of children in HEW-funded day care.

§ 71.42 Parent involvement.

(a) *Day Care Home.* A day care home must—

(1) Provide parents with opportunities to observe the home and to discuss their children's needs before enrollment;

(2) Inform parents about the day care program and its policies;

(3) Regularly offer parents opportunities to observe their children, and talk about their children's needs; and

(4) Regularly exchange information with parents about their children.

(b) *State Agency.* (1) The State agency shall provide information and technical assistance to day care homes on working with parents.

(2) The State agency shall offer parents their choice of day care facility whenever administratively feasible. The State agency shall make a copy of the HEW day care requirements available to parents using HEW-funded day care.

Intent

The intent of these requirements is to ensure that parents receive information about and access to day care programs, and to encourage parental involvement in the operation of day care programs.

Discussion

Day care's role as a supportive service for families and the great value of parent involvement in the day care program is recognized in these requirements. The major factors which will determine the nature and extent of parental involvement in individual programs are the degree to which parents themselves desire to be involved in the program and the responsiveness of the day care facility personnel, community support groups and States to assist parents in participating in various aspects of their children's day care experiences.

In Section 71.22(a)(2) the term "unlimited access" for parents refers specifically "to observe their children"; this does not apply to any other subsequent action such as unauthorized removal of children from the center. Court actions denying a parent's access to children obviously takes precedence over these regulations.

Subparagraph (a)(5) of the center requirements allows for a wide variety of activities to involve parents both individually and as a group in general program policy-making. This requirement does not intend to include day-to-day operations of the center or hiring and firing of staff. A center may, of course, choose to include parents in these activities.

The specific requirements for involving parents are included in the regulation. Other ways in which both day care centers and homes may involve parents include:

- Organizing periodic meetings to enable parents to advise and comment on their children's needs and the day care program;
- Working with parent advisory councils or committees to provide opportunities for parental advice and comment on the day care program such as:
  - -- Involving parents in evaluating the child care program;
  - -- Providing opportunities for parent involvement in general policy making or resolution of policy issues;
  - -- Developing parent education activities, in consultation with parents;
  - -- Using parent skills in planning the day care program;
  - -- Utilizing parent networks in fund raising activities; and
  - -- Providing information in the primary language of the parents.

The State agency might provide assistance in facilitating opportunities for parent involvement through:

- o Checklists for parents to assist them in assessing the qualify of their children°s day care;
- o Actually involving parents in evaluation and monitoring site visits;
- o Procedures by which parents may raise concerns with the State agency about the day care provided their children;
- o Including parents on the State advisory committee; and
- o Providing information and referral services that assist parents in locating and selecting day care facilities.

The State agency should, as a matter of course, make copies of the HHS day care requirements available to every provider agency. In addition, the State agency shall provide any parent, who makes a direct request, a copy of the day care requirements.

The Federal Role

HHS will provide technical assistance material on parent involvement to day care facilities and State agencies.

Because the group composition requirements for centers and homes are so different, the discussion of these two sections is handled separately. Section 71.44 for homes follows Section 71.24 for centers.

§ 71.24 Group composition.

(a) *Day Care Center.*—(1) *Group Size.* (i) A day care center shall meet the following group size requirements at all times of the day, except during arrival and departure times, meals, naptime and special activities such as field trips and playground activities:

Age of child	Maximum group size scheduled enrollment	Maximum group size attendance
Birth to 2 years	6	6
2 years	12	12
3 to 5 years	18	18
6 to 10 years	16	14
10 to 14 years	20	16

(ii) For mixed age groups, a day care center shall meet the group size requirements for the age of the youngest child in the group, if children in the youngest age category make up 20% or more of the group. If children in the youngest age category make up less than 20% of the group, the group size requirement for the next highest age category must be met.

(iii) If more than one group occupies a single room, each group must have its own clearly defined physical space.

(2) *Staffing Requirements.* (i) A day care center shall meet the following staffing requirements:

Age of child	Staffing requirement scheduled enrollment	Staffing requirement attendance
Birth to 2 years	1:3	1:3
2 years	1:4	1:4
3 to 5 years	1:7	1:8
6 to 10 years	1:16	1:14
10 to 14 years	1:20	1:16

(ii) A day care center shall calculate the required staff hours by dividing the total child hours for each age category served by the age appropriate staffing requirement.

(iii) A day care center shall ensure that required staff are present with children at all times, except for normal breaktimes.

(iv) Staffing requirements may be met for children aged two years and older on a centerwide basis. (For example, if a center determines that it needs 4 caregivers to meet the staffing requirement for its 2 year old children, and 10 caregivers for its 5 years old children, the center would meet the staffing requirement so long as it had 14 caregivers assigned to care for children in both categories. The center need not necessarily assign 4 caregivers to care for its 2 year old children, nor assign 10 caregivers to care for its 5 year old children.)

(v) A day care center shall meet the staffing ratio requirement for each group of children under two years of age at all times, except naptime.

(vi) For mixed age groups which include children under two years old, a day care center shall meet the staffing requirements for the age of the youngest child in the group, if children in the youngest age category make up 20% or more the group. If children in the youngest age category make up less than 20% of the group, the staffing requirement for the next highest age category must be met.

(vii) At least one caregiver shall be present with children at all times.

(viii) Hours spent providing direct care to children by a volunteer may be counted towards meeting the staffing requirements, if the volunteer works at least 10 hours a week and complies with the traning requirement at Section 71.12.

(ix) Hours spent providing direct care to children by a staff member who otherwise performs non-caregiving duties may be counted towards meeting the staffing requirements, if the staff member complies with the requirement at Section 71.12.

(x) A day care center shall obtain substitutes in the case of caregiver absences.

(b) *State Agency.* (1) The State agency shall determine compliance with the group size requirements on a group by group basis.

(2) The State agency shall determine compliance with the group size and staffing requirements on the basis of either actual attendance or scheduled enrollment.

(3) The State agency shall reimburse day care centers in accordance with the its method of determining compliance with the staffing and grouping requirements.

Intent

The intent of this requirement is to ensure sufficient numbers of caregivers are providing care and supervision to children, and to ensure that children are cared for in grouping arrangments which promote their development.

Discussion

"Group Size" is the first of two sections covering group composition. It addresses the maximum number of children that can comprise single groups during certain times of the day. The actual number of caregivers that might be responsible for each group is not covered in the group size section but is addressed in the second section under "Staffing Requirements".

The specific group size figures prescribed are based upon the recommendations of the National Day Care Study (NDCS) which demonstrated a strong link between group size and quality of care for children. In that study, groups of children at or below the levels reflected in these regulations were characterized as those having caregivers who engaged in more social interaction and less passive watching of children, and children who showed more cooperation, verbal initiative, reflective/innovative behavior, higher gains on skill and knowledge tests and less hostility, conflict and aimless wandering, than did caregivers and children in groups above the levels prescribed.

For purposes of this rule, a group is defined as a cluster of children assigned to one or more caregivers. In many day care centers children are kept together in the same group for a good part of the day. This practice is desirable for enhancing the well-being of these children.

Activity Exceptions

Although it is beneficial to children if the size of the group is maintained within the prescribed limits for most of the day, we recognize that groups in some centers merge during such activity segments as lunch, naptime, outdoor play and special activities. In order not to seriously disrupt current practices of these centers, the maximum prescribed group size (not the staffing requirements) can be exceeded during those activities. This rule also recognizes that children arrive and depart from centers at different times during the early morning and late afternoon hours, and that during these intervals it would be difficult to maintain stable and intact groups. Therefore, group size exceptions will also be permitted during those times. For purposes of this rule, arrival time is defined as the first 60 minutes of the day that children are scheduled to attend while departure time is the last 60 minutes. For centers operating more than 12 hours and for after school programs, arrival and departure times will be defined as those times when less than 60% of the children scheduled to attend are present.

Two separate group size figures are provided in this section; one for scheduled enrollment and one for attendance. Scheduled enrollment has been adjusted by a 12% child absentee rate, which is the average daily absence rate for children of all ages based on a national survey of 3100 day care centers. As specified in paragraph (b) of this regulation, the State agency will determine which of these two compliance options will be used for each FFP center in that State.

Centers using the scheduled enrollment option should prepare a daily list for each group by activity period, to assure that the number of children scheduled does not exceed the allowable numbers prescribed. (This list would be in addition to the staffing roster by age category discussed in the next section.) Since State agencies are required to monitor center compliance with group size on a group-by-group basis for the non-exempt activities (see paragraph b) this list could be available for that purpose as well as for the scheduling of children into appropriate groups. The list should be arranged by activity period (i.e., planned group activities, free play, nap, lunch, individual activity, etc.), with each period identifying the number of groups, the number of children scheduled for each group and the age distribution of children in each group.

A similar daily grouping list should be maintained by centers using the attendance based option. However, 2 lists would be needed: a list reflecting the scheduling of children for scheduling purposes and a separate list reflecting actual child attendance for compliance purposes. Centers would schedule children based upon an anticipated attendance rate for each group. Should the number of children who show up on any given day for a particular group be higher than the projected figure, (and thus the number of children in that group actually exceeds the prescribed group size permitted), centers would be allowed to shift children for that day into groups where the number of children was lower than expected, provided that the mixed-age rule (see below) is met.

Mixed-Age Groups

Centers are permitted to place children from different age categories into the same group. The actual size of the group is then determined by the relative proportion of children in the youngest age category. If the children in the youngest category comprise 20% or more of the total of children in the group, their group size regulation will then be applied. If the youngest children comprise less than 20% of the total, the group must meet the requirement for the next higher age category, even when no children are enrolled in that category.

The mixed-age provision is intended to provide centers with flexibility when necessary. Should the number of children in a given age category be too small to form an individual group, centers might wish to separate those children and place them into other groups. Similarly, this provision can be used if a center decides to place its children into groups based on their developmental ages or, if it prefers, according to a "family-style" arrangement.

While this provision allows caregivers the flexibility they require to meet the needs of their center and their children, the rule is not intended to promote detrimental care for children. Infants and toddlers have particular developmental needs that widely differ from those of older children; as a result, indiscriminate placement of infants and two-year olds into older and much larger groups could harm the younger children. Mixed-age groupings should therefore be used only after careful assessments, so that young children can be placed into the most appropriate groups.

The following chart illustrates the calculation of mixed-group sizes.

Mixed Groups (enrollment option)

Age Category	# of Children in each category	% of youngest Children in total group	# of Children enrolled in group	# of Children permitted in group	Compliance?
Example I: Non-compliance					
0-2	0				
2	4				
3-6	12	25%	16	12	No
6-10	0				
10-14	0				
	16 children/group				

Explanation: The youngest children present, two-year olds, constitute 25% of the entire group. Therefore, the group-size requirement for their age category (12 children) is used, not the requirement for the older group (16 children).

Example II: Non-compliance					
0-2	0				
2	0				
3-6	2	10%	20	16	No
6-10	0				
10-14	18				
	20 children/group				

Explanation: The youngest children fall into the 3-6 year-old category, but they comprise less than 20% of the total. Accordingly, the group size for the next higher group, 6-10 year olds, is used, even though no children in that age bracket are enrolled. The requirement for the 10-14 year olds does not apply.

Example III: Compliance					
0-2	2				
2	4				
3-6	6	17%	12	12	Yes
6-10	0				
10-14	0				
	12 children/group				

Explanation: Here, the youngest children comprise only 19% of the total. The next higher category is used, permitting 12 children in the group. With the enrollment option, the percentage of infants actually in the classroom does not affect the permitted group size. If two four year olds were absent, the proportion of infants in attendance would rise to 20%, but the original group size would still be required.

Under the scheduled-enrollment option the age-mix compliance is determined by schedules only, regardless of actual attendance patterns. On-site monitors would be instructed to examine a centers' records before assessing compliance.

Multiple Groups

This provision permits more than one group of children to occupy a single room provided that each group meets the group size requirement and has its own clearly defined physical space with at least one principally responsible caregiver assigned at all times of the day. (The State's per-child space requirement would of course, have to be met.) This provision allows centers which are organized on an open-classroom basis to qualify for HHS financial assistance.

Each group must be visibly separated from the others. This could be easily accomplished by movable partitions, by the creative arrangement of furniture or simply by some sizeable distance which is considered adequate to minimize noise interference between groups. If allowed by the center, children would not be precluded under this provision to independently move about from one group to another, provided that the number of children in any one group, at any one time, does not exceed the prescribed group size level during the non-exempt periods of the day.

Staffing Requirements

The provision of this second section of group composition addresses several regulatory staffing issues: the number of caregivers that should be scheduled daily to work with children; the assignment of caregivers to specific groups; and the qualifications for non-regular caregivers to be counted in the staffing requirements. These provisions do not directly relate to how groups should be formed or which children should be assigned to which groups. Allowable practices regarding these issues were addressed in the first section under "Group Size"

To fully understand the dynamics of these staffing regulations it would be helpful to consider the initial 2 provisions (staff/child ratios and scheduling caregivers) as defining the minimum number of caregivers that centers must schedule each day to supervise children. This calculated number will be required for compliance regardless of how the remaining provisions in this section, or the provisions in the Group Size section, are implemented. As will be seen later, this figure is based only upon the number of children in each regulatory age category which are scheduled to attend the center for specific time periods and the staff/child ratios which are prescribed for each of these regulatory age categories. It is not in any way influenced by the number, or composition, of groups.

The second 5 provisions relate both to the assignment of these caregivers to groups, as well as to when these caregivers are required to attend to children in these groups. With the exception of caregivers responsible for supervising children under two years old, center directors, may assign

any number of caregivers to any group of children for any time period they choose. However, except when stated, caregivers are only counted towards meeting the staffing requirement when they are attending to children in these groups. (These time exceptions should not be confused with the activity exceptions for group size).

The final 3 provisions relate to the conditions under which volunteers and non-regular caregivers can be counted towards meeting the staffing requirement and what actions the center must take when caregivers are absent.

Staff/Child Ratios - these ratios serve as mathematical terms for calculating the minimum number of caregivers which are required to be at the center working with children at any one time of the day. Two separate staff/child ratio figures are also provided in this section - one for scheduled enrollment and one for attendance. Like group size, the scheduled enrollment figures have been adjusted by a 12 percent child absentee rate across all age categories. State agencies must select one of these two options (consistent with their selection for group size) for each FFP center in that State.

The scheduled enrollment option defines the absolute outer limits of ratio acceptability for the center as a whole. That is, regardless of attendance patterns, these figures can never be exceeded. Unlike the attendance based option, center directors do not have to estimate daily child absentee fluctuations, a factor over which they have no control. Children are also afforded greater protection of being attended to by the number of caregivers research has demonstrated to be minimally necessary. Under the attendance based option, however, a higher than expected child attendance rate on a given day would place a center out of compliance, if the additional needed caregivers are not readily available.

Scheduling Caregivers - in calculating the minimum number of caregivers which must be at the center, directors may use a total hours count of children and caregivers. This method is desirable if all children arrive at the center and depart from the center together at the same time each day. Since most centers have children arriving and departing at varying times during the day and therefore exhibit fluctuations in numbers of children present at any given time of the day, calculation of the number of caregivers necessary may be accomplished by an hour by hour head count of children and caregivers.

Under the scheduled enrollment option the same rosters could be used for both a director's scheduling of children and caregivers and for a monitoring agent's assessment of compliance. Under the attendance based option different rosters would be used; a scheduled hours roster for scheduling purposes and an actual attendance hours roster for compliance purposes.

Caregiver hours would be calculated by dividing the total number of children for each age category served by the age appropriate staffing requirement (i.e., staff/child ratio). These needed caregivers could then be summed across age categories for the two years and older ages since staffing requirements can be determined on a center-wide basis for these children. Determining minimum caregivers needed for compliance for the under two year old age category, however, requires a separate calculation.

The following table illustrates a schedule which is organized by hour of the day. It shows the minimum number of caregivers which are required to be scheduled for each hour of the day, corresponding to the fluctuations in scheduled child enrollment which characterize that particular center.

Based upon the scheduled enrollment patterns in this illustration, a minimum of 3 caregivers would be scheduled for children under two years during the hours of 8 a.m. - 1 p.m. and 4 caregivers scheduled during the hours of 1 p.m. - 6 p.m. (Column D). For children two years and older a minimum of 12 caregivers, would be scheduled between 8 a.m. - 9 a.m., 15 caregivers between 9 a.m. - 3 p.m., 17 caregivers between 3 p.m. - 6 p.m. and 5 caregivers between 6 p.m. - 7 p.m. (Column O).

For children under two years old any fractional caregiver count must be rounded up to the next whole number. For children two years and older numbers of caregivers for all age categories are summed and any fractional caregiver count of .5 or above must be rounded up to the next whole number.

Time of the Day - the required number of caregivers calculated above must be present with children at all times of the day, except for normal breaktimes. The requirement does not recognize counting caregivers as part of the staffing requirement when these caregivers are attending to activities outside of the classroom where children are located. Exceptions to this provision will be allowed only when these caregivers take normal breaks for short periods of time and when caregivers who supervise children under two years of age are not attending to these infants when they are napping. During both of these allowable exceptions, however, at least one caregiver must be present with the children.

Assigning Caregivers - For groups comprising children under two years old a 1:3 staff/child ratio for each such group must be met.* However, compliance with the staffing requirement may be met on a center level basis for all ages of children two years and older. As such, a center may compose groups of any ratio of caregivers and children two years and older, provided that the staffing requirements for the center and the group size requirements for the group are met.

*Since attachment to adults is a particularly strong developmental factor among infants, it would be desirable to assign the same caregivers to these groups for the entire day.

October 11

Hour by Hour Enrollment and Staffing Schedule (Scheduled Enrollment Option)

	Birth - 2 Yrs.				2 Yrs.			3 - 6 Yrs.			6 - 10 Yrs.			Total 2 - 10 Yrs.	
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)	(O)
Time of Day	# Children Scheduled	Ratio	Required # Caregivers	Required # of Scheduled Caregivers (rounded up)	# Children Scheduled	Ratio	Required # Caregivers	# Children Scheduled	Ratio	Required # Caregivers	# Children Scheduled	Ratio	Required # Caregivers	Required # Caregivers (C+F+M)	Required # of Scheduled Caregivers (rounded up)
8 am	8	1:3	2.7	3	14	1:4	3.5	75	1:9	8.3	--	1:16		11.8	12
9 am	8		2.7	3	18		4.5	93		10.3	--			14.8	15
10 am	8		2.7	3	18		4.5	93		10.3	--			14.8	15
11 am	8		2.7	3	18		4.5	93		10.3	--			14.8	15
12 pm	8		2.7	3	18		4.5	93		10.3	--			14.8	15
1 pm	11		3.7	4	18		4.5	93		10.3	--			14.8	15
2 pm	11		3.7	4	18		4.5	93		10.3	--			14.8	15
3 pm	11		3.7	4	18		4.5	93		10.3	32		2.0	16.8	17
4 pm	11		3.7	4	18		4.5	93		10.3	32		2.0	16.8	17
5 pm	11		3.7	4	18		4.5	93		10.3	32		2.0	16.8	17
6 pm	--		--	--	4		1.0	27		3.0	16		1.0	5.0	5

This provision gives center directors much more flexibility for assigning caregivers based on the different developmental needs of children; makes monitoring for staffing compliance substantially easier and more reliable; and, as seen in Tables 1 and 2, avoids the need to round-up fractional caregiver figures for each age category, thus reducing the cost for the center. The overall staffing requirement of caregivers at the center level must be met although actual staff/child ratios in each group would vary according to the judgment of the director.

Exceptions for Under Two Year Olds - caregivers supervising these infants may be away from them during naptime (at least one caregiver must be in attendance, however). While this opportunity to relax (or even perform other center-related activities) is extremely important to adults who are constantly interacting with infants, centers should exercise extreme caution that the health and safety of these infants will be protected.

Mixed-Age Groups - this provision under staffing requirement, only affects the assigning of caregivers to mixed age groups which contain children under two years old. (The mixed-age provision for "Group Size" applies to children of all ages and should be examined separately). The intent of this provision is to allow some children age two or younger to be included in groups containing children who are predominently over two years, if the center feels this practice is desirable. It was not intended to disburse small numbers of these infants across groups which exceed 6 predominently older children. Those arrangements could be harmful to infants, and are highly discouraged.

One Caregiver Minimum - at least one caregiver must be present with children at all times. In a one-caregiver group situation, arrangements must be made to have a substitute available during normal breaktimes.

Volunteers - time spent by volunteers providing direct care to children may be counted toward satisfying the staffing requirement, if the volunteer is scheduled to provide such care for at least 10 hours per week and meets the training requirement in Section 71.12 of the regulations.

Non-Caregiver Staff - time spent providing direct care to children by center staff who otherwise perform non-caregiver duties, may be counted towards satisfying the staffing requirement, if the staff person meets the training requirement in Section 71.12 of the regulations. For example, a cook or a bookkeeper may be assigned to provide normal caregiver duties when they are not performing those other activities. Only the time spent as a caregiver will be counted in the staffing requirement, however.

Caregiver Absences - a day care center shall obtain substitutes in case of caregiver absences. This provision is designed to assure that the required number of caregivers needed for compliance is never below the minimum necessary to assure the continual well-being of children.

§ 71.44 Group composition.

(a) In a day care home in which one caregiver cares for children of all ages, including children under two years of age, the group size at any given time shall not exceed five. No more than two of these children may be under two years of age. The caregiver's own children younger than six and not yet in full day school shall count towards the group size requirement.

(b) In a day care home in which one caregiver cares for children who are all under two years of age, the group size at any given time shall not exceed three. There may be no other children in the home besides the caregiver's own children over the age of six years.

(c) In a day care home in which one caregiver cares for children who are all two years of age or older, the group size at any given time shall not exceed six, except that two additional school age children may be cared for before and after school hours. The caregiver's own children younger than six and not yet in full day school shall count towards the group size requirement.

(d) In a day care home in which two or more caregivers care for children of all ages, including children under two years of age, the group size at any given time shall not exceed ten. No more than two of these children may be under two years of age. The caregivers' own children younger than six and not yet in full day school shall count towards the group size requirement.

(e) In a day care home in which two or more caregivers care for children who are all two years of age or older, the group size at any given time shall not exceed 12, except that two additional school age children may be cared for before and after school hours. The caregivers' own children younger than six and not yet in full day school shall count towards the group size requirements.

Intent

The objective of this requirement is to insure that children have opportunity for a sufficient amount of individual attention to promote healthy growth and development and to limit caregiver burden. This requirement is further intended to limit group size to a manageable number in the event of emergency. At the same time, the requirement is intended to provide needed flexibility for the care of school-age children.

Discussion

Group composition requirements for family day care homes are based on actual attendance. They reflect the maximum number of children that can be present at any given time of the day. Therefore, the number of children in a family day care home can never exceed these numbers. Reimbursements should not be made for more than the maximum numbers of children.

Variations in the number of children present could result from two situations: daily absentee rates and fluctuations in daily enrollment patterns. In the latter situation, for example, some children may be scheduled only in the morning or only on Monday, Wednesday and Friday of each week. Rosters of daily enrollment should be maintained by family day care homes for compliance purposes.

Caregiver's own children under 6 and not yet in full day school count toward the group size in all care situations. However, the caregiver's own school-age children do not count as extra school-age children for before and after-school care.

When two additional school age children are allowed before and after school, these same two children may also be present during the full days of school holidays.

Additional school-age children other than the caregiver's own are not allowed in homes where children under two are present.

In homes with two or more caregivers, the adult/child ratio cannot be weaker than 1.5 (when children under 2 are enrolled) or 1.6 (when no children under two are enrolled.

Subpart D—State Agency Administration

§ 71.56 Monitoring.

(a) The State agency must determine each day care facility's compliance with these requirements at least annually.

(b) The State agency shall make an on-site visit to a day care facility at least every three years and whenever the State has reason to believe that the facility fails to meet the requirements of this part.

Intent

The intent of this requirement is to assure that providers are in compliance with the day care regulations.

Discussion

Although this section requires on-site visits to all providers every three years, it does also require that each provider's compliance with the regulations be determined annually. Many States are presently monitoring day care facilities through on-site visits annually, semi-annually, or, in some cases, even quarterly. This monitoring would certainly allow for the required annual determination of compliance. Those States that do not monitor their day care facilities annually might institute administrative reporting procedures which would supply adequate data for such a determination. Such procedures could include:

- o A self-evaluation by providers to be filed with the State agency;
- o A sharing of evaluation reports between State/county licensing staff and the State agency;
- o A sharing of evaluation reports between inspectors from other agencies (the Department of Agriculture, the State fiscal staff, etc.) and the State agency; and
- o The development of a short-form assessment instrument (10-20 predictor or indicator items) to be used by any of the above.

A State is also required to make an on-site visit whenever there is reason to believe that a facility is out of compliance. For example:

- o complaints about a provider are received;
- o evaluation reports from other facility inspectors indicate a problem;
- o deficiencies are found during a monitoring visit;
- o questions arise from a self-evaluation report.

While the Federal government will not require one uniform facility monitoring tool to be used by States, State tools will need to meet certain criteria which will be available in the Fall of 1980.

§ 71.58 Rates of payment.

(a) In establishing rates of payment for child day care services the State agency shall take into account the costs to the facility of meeting this part.

(b) The State agency shall make available upon request the basis for its day care reimbursement rates, and the procedures used to determine those rates.

Intent

The intent of this requirement is to encourage States to consider the cost of providing day care services when establishing rates of payment.

Discussion

This section was included to strongly encourage State agencies to recognize the costs which facilities incur in providing care under HHS regulations in determining how much they will pay providers, and to set reasonable rates which are sufficient to cover those costs in an efficiently operated facility.

Besides compliance with standards, other factors which should be considered in establishing rates of reimbursement are:

- o whether there is extra paperwork required by serving government funded children;
- o whether it is more efficient to have a separate rate for transportation, health assessment or other health related assistance and social services;
- o whether the facility serves 100% (or predominately) government funded children or predominately private fee children;
- o whether the facility must meet the staff/child ratio or if that requirement has been waived; or
- o whether the facility serves infants and toddlers requiring more staff.

Federal regulations do not require that fees charged to government agencies be the same as fees charged to private parents although some State regulations may.

Establishing rates of payment for day care homes in many respects is more difficult than for centers because of the more "home-like" environment of the care. Many of the costs for the "facility," utilities, food, etc., are shared with the family. The Internal Revenue Service has guidelines for computing costs of day care homes which are tax deductible.

This regulation allows the State agency great latitude in the process that it must use in arriving at the price it will pay. Some States use a negotiated rate, where they individually negotiate with each facility a price that they will pay per child. Other States determine what they believe to be a reasonable price and pay a flat state-wide or sub-state regional rate. Some States pay the prevailing community rate; while some States use a competitive bid process.

The regulation requires that the agency provide the basis for its rates, when requested. The intent of this requirement is to make sure that the public is aware of payment rates/costs and can provide its views on the reasonableness of the rates. Involving parents, providers and day care professionals in the rate setting process is encouraged. Publishing the rates for public comment is also encouraged as are other forms of periodic review of rates. This is particularly important when statewide or regional rates are paid rather individually negotiated rates.

There are two important factors related to this regulation: the process by which the State arrives at the price it will pay for day care and what cost elements are considered. Regardless of these factors, the State agency should have reliable cost data, which means the facility should have a reliable accounting system, and the agency should be able to do professional cost analysis. HHS, with the help of several State agencies, has developed several technical assistance tools to help State agencies improve cost accounting systems and cost analysis. These will be made available.

The method for determining compliance with group size and staffing requirements (scheduled enrollment or attendance) must be consistent with reimbursement practices. That is, if a State agency monitoring guide uses scheduled enrollment for compliance, they must pay on the basis of enrollment. If they monitor on the basis of attendance, they must pay on the basis of attendance. However, this provision is not intended to discourage the State agency from excusing and reimbursing a reasonable number of absences.

The rule does not specifically state whether day care home group composition requirements are to be based on attendance or enrollment. As a consequence, States are free to choose which method they prefer.

The rule does not require uniform practice within States. Counties may differ on methods used as long as reimbursement and monitoring practices are consistent.

§ 71.60 Future review of day care regulations.

The Secretary will review the effectiveness of these regulations 36 months after the April 1, 1981 effective date. As part of this review, the Secretary will publish a notice of opportunity for public comment on the effectiveness of the regulations. The Secretary will assess the comments and publish the results of the review and assessment in the Federal Register.

Intent

The intent of this requirement is to ensure that the day care regulations remain relevant standards of quality and to assess the impact of each requirement in achieving its objectives as perceived by State agency personnel, day care providers and parents.

This requirement also provides another avenue for public participation in regulatory policy.

Discussion

The information derived from the review of the regulation after 3 full years of operation will provide guidance to the Department of the effectiveness of the regulations and signal any problems or regulatory areas needing further Departmental attention.

§ 71.62 State agency advisory council.

(a) The State agency shall have a Day Care Advisory Council to advise the State agency on the implementation of HEW day care requirements.

(b) Membership on the Day Care Advisory Council must include parents of HEW funded children in day care, operators of day care centers and day care homes, and representatives of appropriate public agencies.

Intent

To establish a State Advisory Council with broad representation by parents, providers of day care and public agencies to ensure the appropriate implementation of the day care requirements; and, at the same time allow the States to determine their own priorities according to the needs of each State.

State Agency Advisory Council

A State Agency Advisory Council as used in this section means that each State which provides day care services under HHS assisted programs, as specified in Section 71.2 of these regulations, must have a day care advisory council as required in 71.62(a).

The "State agency" for purposes of these regulations, could be the State Title XX agency inasmuch as it is the single State agency which expends the largest amount of its Federal program dollars on day care services. However, the Chief Executive of the State should identify the State agency having primary responsibility for the establishment and staffing of a day care advisory council, and require other appropriate agencies to be represented on the council.

Day Care Advisory Councils already in existence within the State may meet the requirement of this section providing representation from all sectors of the population as identified in Section 71.62(b) are included. To the extent parents, providers, and agency representatives are not included on currently existing day care councils or committees, the State shall modify the State membership requirements so as to meet the requirements set forth in Section 71.62(b).

The State Agency Advisory Council should have representation from all geographical areas of the State; and, could encourage participation of low income parents on the council by arranging for their transportation and meals and child care expenses.

The State Agency Advisory Council as required by this section is a permanent council with a continuing responsibility to advise on the implementation of the day care program within all appropriate agencies within the State.

An Advisory Council, unless so authorized by State Statute, does not make or directly implement policies. The function of the council in the context of these regulations is, for example, to advise on the day care services program, assess its implementation, identify strengths and weaknesses; and bring any observations and recommendations to the agency administrators. The Council may be used to assist in the development and assessment of the training plan.

In order for the State Advisory Council to function effectively as an advisory council, the State Agency should provide information and materials to members in a timely manner. Such information should cover the State Plan, monitoring reports, statistical data and other appropriate materials which will enable the council to carry out its responsibilities in an informed manner.

§ 71.84 State agency waiver.

The State agency may waive the staffing requirements in § 71.24 for a day care center in which not more than 20% or 10 (whichever is lower) of the children in the center are children whose care is paid for wholly or in part with Federal funds, if the day care center meets State licensing standards.

Intent

The intent of this requirement is to allow a State to waive the HHSDCR group composition requirements for any center serving a small number of funded children. This is done to encourage, by lowering costs, such centers to continue to serve these children.

Discussion

The term "staffing requirements" rather than "group composition requirements" appears as an error in the regulations and is being corrected. This correction appeared in the Federal Register in July.

The requirement establishes that the waiver can only be used when there are not more than 10 children or not more than 20% of the center's enrollment (whichever is the lower number) federally funded. The waiver is only for group composition requirements and is granted at State discretion.

Each State will establish its own waiver procedure and make it known to all facilities.

§ 71.66 Effective date.

These regulations are effective on October 1, 1980 except that—

(a) The training requirements in § 71.12 and 71.32, and the requirements in § 71.36 and § 71.40 that day care homes inform parents about and refer them to health and social services, will become effective on April 1, 1981; and

(b) For any State, the October 1, 1980 effective date of the group composition requirements at § 71.24 may be extended for not more than two years upon a showing satisfactory to the Secretary that substantial numbers of HEW funded children are receiving care in centers that meet group composition requirements less stringent than the requirements in § 71.24, and that additional time is needed to meet those requirements within the State. The showing must—

(1) Be made to the Secretary by the State agency by October 1, 1980; and

(2) Include detailed information about the group composition requirements currently being met by the centers within the State;

(3) Indicate the number of HEW funded children who are receiving care in centers that do not comply with the group composition requirements in § 71.24;

(4) Estimate the time necessary to fully meet those requirements in centers caring for HEW funded children within the State; and

(5) Include a schedule for a gradual phase-in of the requirements.

Intent

The Department has included several provisions to allow day care centers as much flexibility as possible in meeting the groups composition requirements in cost effective ways. The effective date of the group composition requirements for day care homes at Section 71.44 may also be extended for not more than two years upon a satisfactory showing to the Secretary as established in Section 71.66 (b). The Department fully intends to implement the standards in all States by assisting States to meet compliance through strategies of reasonableness which avoid undue hardships on the States in complying with the requirements.

Discussion

The time period for States to file a request to the Secretary for an extension of the group composition requirements is six months from the date of publication of the regulation. This means the Secretary must receive the appeal from any State by October 1, 1980. The granting or rejection of the appeal will be made within a reasonable time after receipt of the appeal.

As written, the regulation allows for an extension only for group composition requirements in centers. A Technical Amendment will be published in the Federal Register to allow for this extension of the effective date for group composition requirements in day care homes.

If the appeal for extension of the effective date is granted, the extension may not exceed two years. At the end of the phase-in period, every center serving HHS funded children within a State (except centers granted waivers based on low numbers of HEW funded children under Section 71.64) will be subject to the new HHS group composition requirements.

This requirement is a signal that States should submit any desired requests for extension of the effective date for group composition requirements under Section 71.66 as soon as possible after publication of the day care regulations.

Although not specifically stated in the requirement, maintenance of effort is implied in Section 71.66 because the phase-in allowance for States which request it to reach compliance must be progressive, that is, no State, once granted an extension for effective date, should permit any of its provider agencies to drop staffing requirements below the compliance level at the time the entire set of regulations become effective (October 1, 1980).

This rule does not apply to programs which are over compliance. If actual staff child ratios of programs are higher than both the State licensing requirements and the Federal relgulations on staffing (Section 71.24) the centers may be allowed by the States to lower their staffing ratios to the level of compliance of Federal regulation or State licensing requirement, whichever is higher.

The intent of this provision is specified in the preamble to the regulation by the language: "We expect that during the phase-in period the percentage of HHS funded children in centers which meet the HHS group composition requirements would continue to increase according to a fixed time schedule approved by the Secretary."

This requirement which, in effect, allows a delay in the effective date of the day care center staffing requirements for selected States upon appeal and subsequent granting of approval by HHS, should not be confused with Section 71.8(2) of the Federal Financial Participation (FFP) requirement which provides for a plan of corrrction which specifies a reasonable time period for meeting all requirements within the regulations. The request for an extension of the effective date for staffing requirements in day care centers must be filed before the regulations go into effect on October 1, 1980. State corrective action plans for meeting any of the requirements will not be accepted until after the October 1, 1980, effective date and after a series of program assessment and monitoring activities by the States.

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